

Applicants: Gerald W. INGRAM *et al.*
Appl. No.: 09/847,999

Remarks

Reconsideration of this Application is respectfully requested.

Claims 31-33 are pending in the application, with claim 31 being the independent claim.

Based on the following Remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

All pending claims of the captioned patent application, claims 31-33, were rejected by the Examiner in the November 6, 2003 on two bases. First, all pending claims were rejected under 35 U.S.C. § 103(a) as being obvious over art cited by the Examiner. Second, all pending claims were provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as claims 174-176 of U.S. Patent Application 09/594,786 (referred to hereinafter as the '786 application).

The rejection under 35 U.S.C. § 103(a) was appealed to the Board of Patent Appeals and Interferences (Appeal No. 2004-2266). In the Decision on Appeal, the BPAI reversed the decision of the Examiner with regard to the rejection of claims 31-33 under 35 U.S.C. § 103(a). Decision on Appeal, May 26, 2005, Paper No. 27, pp. 7, 8.

As for the provisional double patenting rejection under 35 U.S.C. § 101, the BPAI sustained this rejection *pro forma*. Claims 174-176 of '786 application have been canceled, however. Amendment and Reply, August 26, 2004, p. 3, U.S. Patent Application No. 09/594,786. As stated by the Examiner in the present application, "A statutory (35 U.S.C. § 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer

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coextensive in scope." Office Action, November 6, 2003, Paper No. 11, p. 9, U.S. Patent Application 09/847,999. Because claims 174-176 of '786 application have been canceled, there are no "conflicting claims" still pending. The double patenting rejection of the present application has therefore been overcome.

In summary, the rejection of the pending claims under 35 U.S.C. § 103(a) has been reversed by the BPAI, and the double patenting rejection under 35 U.S.C. § 101 has been rendered moot in light of the timely cancellation of the conflicting claims in the '786 application. For these reasons, the applicants respectfully request that the captioned application be passed to allowance.

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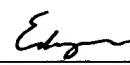
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

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Edward W. Yee
Attorney/Agent for Applicants
Registration No. 47,294
VENABLE LLP
P.O. Box 34385
Washington, D.C. 20043-9998
Telephone: (202) 344-4000
Telefax: (202) 344-8300

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